

Charles I. Kaplan
Texas Bar No. 11094300
Email: cik@charleskaplanlaw.com
KAPLAN & MOON, PLLC
2929 Carlisle St. Suite 115
Dallas, Texas 75204
Telephone: (214) 522-4900
Telecopier: (800) 930-7112

Baltasar D. Cruz
State Bar No. 05196150
Email: BaltasarDCruz@aol.com
2929 Carlisle St. Suite 115
Dallas, Texas 75204
Office Telephone: (214) 522-4900
and
P.O. Box 600823
Dallas, TX 75360
Cell Phone: (917) 623-9250
Telecopier: (732) 875-0792

COUNSEL FOR DALLAS COMMODITY COMPANY

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: §
JOSEPH F. LANGSTON, JR., § CASE NO. 19-33022-SGJ7
§
§
Debtor. § CHAPTER 7
§

DALLAS COMMODITY COMPANY’S AMENDED
OBJECTIONS TO DEBTOR’S CLAIMED EXEMPTIONS

Notice

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, DALLAS TEXAS 75242 BEFORE CLOSE OF BUSINESS ON APRIL 29, 2022, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

NOW COMES DALLAS COMMODITY COMPANY and files this, its objections to the Debtor's claimed exemptions, as follows:

Summary of Objections

1. The Debtor, Joseph F. "Chip" Langston, Jr. (hereinafter also referred to as the "**Debtor**"). seeks to exempt two self-directed IRAs (a Roth IRA and a traditional/SEP IRA, collectively referred to herein as the "**Debtor's IRAs**") that are administered by OLA INVESTMENTS, LLC, which is owned and managed by the **Debtor**. The money in the **Debtor's IRAs** has been pooled into a common fund in one account administered by OLA INVESTMENTS, LLC along with funds deposited into a traditional IRA belonging to the **Debtor's** wife LUJAN LANGSTON (his "**wife's IRA**").
2. DALLAS COMMODITY COMPANY objects to the **Debtor's** claim of exemptions of the **Debtor's IRAs** and his "signature authority for OLA INVESTMENTS, LLC at the American National Bank of Texas" because the **Debtor** engaged in one or more "prohibited transactions" under **26 USC § 408(e)(2)(B)** by "lending money or other extension of credit between a plan and a disqualified person" and/or **26 USC § 408(e)(2)(D)** by "transfer[ing] to or, or us[ing] by or for the benefit of, a disqualified person ... the income or assets of the plan", which caused each of the **Debtor's IRAs** to "cease to be an individual retirement account" pursuant to **26 USC § 408(e)(2)**.
3. DALLAS COMMODITY COMPANY also objects to the **Debtor's** claim of exemption of the "earned and contingent commissions due to **Debtor** by Langston Investments, Inc." because LANGSTON INVESTMENTS, INC. has no agreement to pay any commissions to

Debtor, is 50% owned by THE LANGSTON FAMILY LIMITED PARTNERSHIP and 50% by the **Debtor**, and/or LANGSTON INVESTMENTS, INC. is the **Debtor**'s corporate alter ego which the **Debtor** personally caused to be used for the purpose of perpetrating an actual fraud on DALLAS COMMODITY COMPANY primarily for the direct personal benefit of the **Debtor**, individually, and the **Debtor** is, therefore, personally liable for said debt pursuant to Art. 21.223(b) Tex.Bus.Orgs. Code.

Factual Background

4. On March 17, 2014, DALLAS COMMODITY COMPANY filed Cause No. 2014 L 3112, *Dallas Commodity Co. et al v. The Langston Family Limited Partnership et al*, in the Circuit Court of Cook County, Illinois, against the **Debtor** and THE LANGSTON FAMILY LIMITED PARTNERSHIP.

5. On February 19, 2019, a judgment in the amount of \$1,516,647.01 plus post-judgment interest thereon was entered in favor of DALLAS COMMODITY COMPANY against the **Debtor** and THE LANGSTON FAMILY LIMITED PARTNERSHIP in Cause No. 2014 L 3112, *Dallas Commodity Co. et al v. The Langston Family Limited Partnership et al*, in the Circuit Court of Cook County, Illinois.

6. On September 9, 2019 (the "**Date of Bankruptcy**"), the **Debtor** filed a voluntary petition under Chapter 7 of the Bankruptcy Code in this Court.

7. Daniel "Corky" Sherman is the acting Chapter 7 Trustee of the **Debtor**'s bankruptcy case.

8. The bankruptcy trustee declared the **11 U.S.C. Section 341** Meeting of Creditors concluded on March 9, 2022.

9. The **Debtor** has chosen to take the state exemptions listed under chapter 42 of the Texas Property Code.

10. On September 1, 2020, the **Debtor** filed a First Amended Schedule A/B (**Doc. #49**)

listing the following property:

(a) an IRA valued at \$318,717.14 held by OLA INVESTMENTS, LLC (which is solely owned, managed, and operated by the **Debtor**);

(b) another IRA valued at \$250,907.13 held by OLA INVESTMENTS, LLC (which is solely owned, managed, and operated by the **Debtor**);

(c) “signature authority for OLA INVESTMENTS, LLC” at the American National Bank of Texas, valued at \$4,931.51; and

(d) “earned and contingent commissions due to Debtor by Langston Investments, Inc.” in the amount of \$15,685.64.

11. On September 1, 2020, the **Debtor** filed a Second Amended Schedule C (**Doc. #49**), asserting exemptions for:

(a) the **Debtor’s IRAs**, listed above, under **Tex. Prop. Code § 42.0021**;

(b) his “signature authority for OLA INVESTMENTS, LLC at the American National Bank of Texas” under **Tex. Prop. Code § 42.0021**; and

(c) the “earned and contingent commissions due to **Debtor** by Langston Investments, Inc.” under **Tex. Prop. Code §§ 42.001(a)(1)** and **42.001(d)**.

12. The **Debtor’s IRAs** consist of a self-directed Roth IRA and a self-directed traditional/SEP IRA, which have been commingled with each other and with his **wife’s IRA**, which is a traditional IRA.

13. At all times, the **Debtor** has acted as the custodian and administrator of each of the **Debtor’s IRAs** and of his **wife’s IRA**.

14. The **Debtor** is also the General Partner of THE LANGSTON FAMILY LIMITED PARTNERSHIP, in which he holds a 40% ownership interest, his wife LUJAN LANGSTON

holds a 40% ownership interest, and their daughter EMMALEE LANGSTON owns the remaining 20% interest.

15. At all times, the **Debtor** has used THE LANGSTON FAMILY LIMITED PARTNERSHIP's bank account as his own personal bank account.

16. Upon information and belief, all of the money deposited into the **Debtor's IRAs** and his **wife's IRA** on or before April 2, 2018 was transferred from THE LANGSTON FAMILY LIMITED PARTNERSHIP's checking account into said accounts.

17. The **Debtor's** wife LUJAN LANGSTON has never been employed by THE LANGSTON FAMILY LIMITED PARTNERSHIP.

18. After April 2, 2018, additional sums were transferred from LANGSTON INVESTMENTS, INC.'s checking account into the **Debtor's IRAs** and his **wife's IRA**.

19. The **Debtor's** wife LUJAN LANGSTON has never been employed by LANGSTON INVESTMENTS, INC.

20. Prior to March of 2018, 1,000 shares of LANGSTON INVESTMENTS, INC. were owned by THE LANGSTON FAMILY LIMITED PARTNERSHIP and the remaining 1,000 shares were owned by the **Debtor**.

21. Sometime in March of 2018, the **Debtor** issued an additional 98,000 shares of LANGSTON INVESTMENTS, INC. stock, of which he gave 18,000 shares to himself, 40,000 shares to his wife LUJAN LANGSTON, and 40,000 shares to his daughter EMMALEE LANGSTON, all in exchange for no lawful consideration, which DALLAS COMMODITY COMPANY alleges were fraudulent transfers made in an attempt to dilute THE LANGSTON FAMILY LIMITED PARTNERSHIP's ownership interest in LANGSTON INVESTMENTS, INC. from 50% to 1% with the intent to hinder, delay and defraud creditors.

22. In April of 2018, the **Debtor** transferred all funds remaining in THE LANGSTON FAMILY LIMITED PARTNERSHIP's bank account to a new bank account belonging to

LANGSTON INVESTMENTS, INC. and closed THE LANGSTON FAMILY LIMITED PARTNERSHIP's bank account, which DALLAS COMMODITY COMPANY alleges was done with the intent to hinder, delay, and defraud creditors.

23. At all times thereafter, the **Debtor** has used LANGSTON INVESTMENTS, INC.'s bank account as his own personal bank account.

24. Prior to filing bankruptcy, from December 14, 2015 through April 2, 2018, the **Debtor** also:

- a. made transfers totaling \$287,111.71¹ from OLA INVESTMENTS, LLC's account (consisting of the pooled deposits designated as having been made into the **Debtor's IRAs** and his **wife's IRA**), to THE LANGSTON FAMILY LIMITED PARTNERSHIP's checking account as purported "loans" to THE LANGSTON FAMILY LIMITED PARTNERSHIP and, in turn, on multiple occasions, transferred substantial sums from said account into a stock trading account (which has never been designated as a retirement account) at Ameritrade², which he used to trade stocks for his own personal benefit, and made additional transfers from the Ameritrade account back to THE LANGSTON FAMILY LIMITED PARTNERSHIP's checking account;
- b. made transfers from THE LANGSTON FAMILY LIMITED PARTNERSHIP's checking account to OLA INVESTMENTS, LLC's account (consisting of the pooled deposits designated as having been made into the **Debtor's IRAs** and his **wife's IRA**)

¹ These transfers consist of the following: \$10,000.00 on 12/14/15, \$10,000.00 on 01/22/16, \$1,300.00 on 01/29/16, \$23,500.00 on 03/09/16, \$28,000.00 on 05/27/16, \$50,000.00 on 07/07/16, \$32,530.86 on 07/31/16, \$3,500.00 on 09/29/16, \$5,000.00 on 10/19/16, \$5,000.00 on 11/13/16, \$5,000.00 on 12/04/16, \$5,000.00 on 12/27/16, \$2,000.00 on 01/19/17, \$33,000.00 on 07/04/17, \$280.85 on 10/08/17, \$25,000.00 on 10/16/17, \$5,000.00 on 11/10/17, \$20,000.00 on 01/10/18, \$10,000.00 on 01/18/18, \$3,000.00 on 02/13/18, and \$5,000.00 on 04/02/18.

² These transfers include the following: \$50,000.00 transferred on 07/08/16, \$30,000.00 on 08/02/16, \$35,000.00 on 08/16/16, \$45,000.00 on 08/23/16, and \$15,000.00 on 01/26/17.

of \$25,000.00 on June 26, 2016 and \$187,000.00 on January 29, 2017, which he has characterized as “Loan repayments”;

- c. made transfers totaling \$56,000.00 from THE LANGSTON FAMILY LIMITED PARTNERSHIP’s checking account to OLA INVESTMENTS, LLC’s account (consisting of the pooled deposits designated as having been made into the **Debtor’s IRAs** and his **wife’s IRA**) characterized as IRA contributions to each of the **Debtor’s IRAs** and to his **wife’s IRA**, on April 18, 2016 (in the amounts of \$15,000.00, \$6,500.00, and \$6,500.00, respectively) and March 10, 2017 (in the amounts of \$15,000.00, \$6,500.00, and \$6,500.00, respectively); and
- d. used THE LANGSTON FAMILY LIMITED PARTNERSHIP’s checking account to pay all of his own personal credit card bills and other personal expenses, including paying the property taxes on his home, paying for gifts to his family members (including paying for putting in a new floor in his daughter’s home), and making tens of thousands of dollars of charitable contributions to Landmark Church of Christ (of which he is a corporate officer).

25. Prior to filing bankruptcy, in 2018 and 2019, the **Debtor** also:

- a. made transfers totaling \$67,572.92³ from OLA INVESTMENTS, LLC’s account (consisting of the pooled deposits into the **Debtor’s IRAs** and his **wife’s IRA**), to LANGSTON INVESTMENTS, INC.’s checking account;
- b. made transfers from LANGSTON INVESTMENTS, INC.’s checking account to OLA INVESTMENTS, LLC’s account (consisting of the pooled deposits into the **Debtor’s IRAs** and his **wife’s IRA**) of \$5,203.57 on Dec. 20, 2018, \$60,000.00 on January 4,

³ These transfers consist of the following: \$2,000.00 on 03/28/18, \$32,477.36 on 04/12/18, \$5,101.23 on 04/26/18, \$5,000.00 on 06/12/18, \$10,441.85 on 07/17/18, and \$12,552.48 on 09/26/18.

2019, and \$10,000.00 on May 16, 2019, which the **Debtor** has characterized as “Loan repayments”;

- c. made transfers totaling \$53,750.00 from LANGSTON INVESTMENTS, INC.’s checking account to OLA INVESTMENTS, LLC’s account (consisting of the pooled deposits into the **Debtor’s IRAs** and his **wife’s IRA**) which the **Debtor** has characterized as IRA contributions, on April 20, 2018 (in the amounts of \$15,000.00, \$6,500.00, and \$6,500.00, to each of the **Debtor’s IRAs** and to his **wife’s IRA**, respectively), January 15, 2019 (in the amounts of \$6,500.00 and \$6,500.00 to one of the Debtor’s IRAs and to his wife’s IRA, respectively), and March 6, 2019 (in the amount of \$13,500.00 to one of the Debtor’s IRAs); and
- d. used LANGSTON INVESTMENTS, INC.’s checking account to pay all of his own personal credit card bills and other personal expenses, including paying the property taxes on his home, paying for gifts to his family members (including buying a Jeep for his wife, which was partially paid for by trading in a vehicle purchased by THE LANGSTON FAMILY LIMITED PARTNERSHIP), and making more than \$15,000.00 in charitable contributions to Landmark Church of Christ (of which he is a corporate officer).

26. Also, since filing bankruptcy, the Debtor has withdrawn at least \$143,574.00 (including \$85,124.00 in 2019, \$30,000.00 in 2020, and another \$28,450.00 in 2021, through October 26, 2021) directly from OLA INVESTMENTS, LLC’s account and at least \$154,841.00 (including \$10,000.00 in November or December of 2019, \$89,841.00 in 2020, and \$55,000.00 in 2022) from commodities trading accounts funded by OLA INVESTMENTS, LLC’s account, which properly belong to the bankruptcy estate and must be turned over to the bankruptcy Trustee,

and used additional sums remaining in OLA INVESTMENTS, LLC's account to aggressively trade commodities and stocks for his own personal benefit.

Arguments and Authority

The Debtor's IRAs are Not Exempt

27. The transactions described above between OLA INVESTMENTS, LLC and THE LANGSTON FAMILY LIMITED PARTNERSHIP and between OLA INVESTMENTS, LLC and LANGSTON INVESTMENTS, INC. were prohibited transactions which caused the **Debtor's IRAs** and his **wife's IRA**, which were pooled into one account held by OLA INVESTMENTS, LLC and managed and administered by the **Debtor**, to cease to be one or more individual retirement accounts, effective on the first date of the tax year during which the prohibited transactions occurred.⁴ Accordingly, the **Debtor's IRAs** and his **wife's IRA**, which has been commingled with the **Debtor's IRA**, cannot be claimed as exempt under the provisions of §42.0021 of the Texas Property Code⁵ and the "Operating Agreement of Ola Investments, LLC" and, as a consequence, the assets of the **Debtor's IRAs** and his **wife's IRA** are property of the bankruptcy estate.

28. The "Operating Agreement of Ola Investments, LLC" provides, in relevant part (at "Appendix A"), as follows:

Prohibited Transactions

- a. The Limited Liability Company Manager hereby agrees that **no prohibited transactions (IRC Sec. 4975) will be made on behalf of the LLC. The**

⁴ Internal Revenue Code, **26 U.S.C. §408(e)(2)**

⁵ Section 42.0021(a) of the Texas Property Code allows a debtor to exempt retirement funds to the extent that those funds are in an account that is exempt from taxation under Section 408 of the Internal Revenue Code ("IRC"). An IRA is exempt from tax unless during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiaries engages in any transaction prohibited by Section 4975 of the Internal Revenue Code. Engaging in a prohibited transaction causes the individual retirement account to cease being an individual retirement account as of the first day of such taxable year. See **I.R.C. §408(e)(2)**.

term “prohibited transaction” means any direct or indirect –

- (i) sale or exchange, or leasing, of any property between a plan and a disqualified person;
- (ii) **lending of money or other extension of credit between a plan and a disqualified person** (unless such loan is exempt from this section in accordance with the provisions of § 4975(d);
- (iii) furnishing of goods, services or facilities between a plan and a disqualified person;
- (iv) **transfer to, or use by or for the benefit of, a disqualified person, of the income or assets of a plan;**
- (v) **act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account;** or
- (vi) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

b. The term **“disqualified person” means a person or family member who is**

-
- (i) **a fiduciary of the plan(s) who is a member of the LLC;**
- (ii) a person providing services to the plan(s) who is a member of the LLC;
- (iii) an employer any of whose employees are covered by the plan;
- (iv) an employee organization any of whose members are covered by the plan;
- (v) **an owner, direct or indirect, of 50 percent or more of a corporation, or trust, or estate.**
- (vi) **an officer, director (or an individual having powers or responsibilities similar to those of officers or directors),**
- (vii) **a 10 percent or more shareholder,** or
- (viii) a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described herein.

The term “family member” of any individual shall include a spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

...

29. The Internal Revenue Code, **26 U.S.C. §4975(e)**, contains the following relevant definitions:

(1) Plan.

For purposes of this section, the term “plan” means –

...

(B) an individual retirement account described in section 408(a),

...

(2) Disqualified person.

For purposes of this section, the term “disqualified person” means a person who is –

- (A) a fiduciary;
- ...
- (E) an owner, direct or indirect, of 50 percent or more of—
 - (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,
 - (ii) the capital interest or the profits interest of a partnership, or
 - (iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D);
- (F) a member of the family (as defined in paragraph 6)) of any individual described in subparagraph (A), (B), (C) or (E);
- ...
- (H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or
- (I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

(3) Fiduciary.

For purposes of this section, the term “fiduciary” means any person who –

- (A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
- (B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
- (C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section

405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

30. The Internal Revenue Code, **26 U.S.C. §4975(c)**, defines a “prohibited transaction” as

follows:

General rule.

For purposes of this section, **the term “prohibited transaction” means any direct or indirect –**

- (A) sale or exchange or leasing of any property between a plan and a disqualified person;
- (B) **lending of money or other extension of credit between a plan and a disqualified person;**
- (C) furnishing of goods, services, of facilities between a plan and a disqualified person;
- (D) **transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;**
- (E) **act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or**
- (F) **receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.**

31. The Internal Revenue Code, **26 U.S.C. §408(e)(2)**, provides that the consequences of

engaging in a “prohibited transaction” are as follows:

(A) In general.

If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year.

32. It is also established that when a bankruptcy debtor engages in self-dealing transactions

prohibited by their IRA's governing instruments, as the **Debtor** in this case has done, they forfeit their exemptions. See *In re Yerian*, 927 F.3d 1223, 1225, 1232 (11th Cir.2019) (“Yerian failed to maintain his IRA in accordance with its governing instruments, which explicitly prohibited the acts of self-dealing he engaged in with his IRA funds. As a consequence, he is not entitled to claim a creditor exemption for his IRA under [the applicable Florida statute]”).

33. Because the transfers described above constitute “prohibited transactions” under both the “Operating Agreement of Ola Investments, LLC” and 26 U.S.C. §4975(c), the **Debtor** forfeited his exemptions concerning the funds in the **Debtor's IRAs** and, because those sums were commingled with the funds in his **wife's IRA**, all sums in OLA INVESTMENTS, LLC's account when the **Debtor** filed bankruptcy and all sums which have been withdrawn from said account since the **Debtor** filed bankruptcy should be accounted for and turned over to the bankruptcy Trustee.

34. DALLAS COMMODITY COMPANY, therefore, objects to the exemptions the **Debtor** has claimed for the **Debtor's IRAs** and requests that this Court:

(a) sustain its objections;

(b) declare that all sums in OLA INVESTMENTS, LLC's account(s) constitute property of the bankruptcy estate;

(c) order the **Debtor** to account for and turn over all sums which were in OLA INVESTMENTS, LLC's account(s) when the **Debtor** filed bankruptcy and all sums which have

been withdrawn from said account(s), including all of OLA INVESTMENTS, LLC's commodities and stock trading account(s), since the **Debtor** filed bankruptcy to the bankruptcy Trustee;

(d) award DALLAS COMMODITY COMPANY all other and further relief to which it may be justly entitled.

Summary

35. DALLAS COMMODITY COMPANY objects to the **Debtor's** claim of exemptions of the **Debtor's IRAs** and his "signature authority for OLA INVESTMENTS, LLC at the American National Bank of Texas" because the **Debtor** engaged in one or more "prohibited transactions":

- a. under **26 USC § 408(e)(2)(B)** by "lending money or other extension of credit between a plan and a disqualified person" and/or **26 USC § 408(e)(2)(D)** by "transfer[ring] to or, or us[ing] by or for the benefit of, a disqualified person ... the income or assets of the plan", which caused each of the **Debtor's IRAs** to "cease to be an individual retirement account" pursuant to **26 USC § 408(e)(2)**; and
- b. under the terms of the "Operating Agreement of Ola Investments, LLC" by engaging in the:
 - (i) **lending of money or other extension of credit between a plan and a disqualified person;**

- (ii) **transfer to, or use by or for the benefit of, a disqualified person, of the income or assets of a plan; and/or**

- (iii) **act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account.**

36. Therefore, no exemption is available for the **Debtor's IRAs** or its assets under the provisions of the Texas Property Code or under the IRS Code and all funds that were commingled and in OLA INVESTMENTS, LLC's account(s) when the **Debtor** filed bankruptcy are non-exempt property of the bankruptcy estate and must be accounted for and turned over to the bankruptcy trustee.

37. DALLAS COMMODITY COMPANY also objects to the **Debtor's** claim of exemption of the "earned and contingent commissions due to **Debtor** by Langston Investments, Inc." because LANGSTON INVESTMENTS, INC. has no agreement to pay any commissions to the **Debtor**, is 50% owned by THE LANGSTON FAMILY LIMITED PARTNERSHIP and 50% by the **Debtor**, and/or LANGSTON INVESTMENTS, INC. is the **Debtor's** corporate alter ego which the **Debtor** personally caused to be used for the purpose of perpetrating an actual fraud on DALLAS COMMODITY COMPANY primarily for the direct personal benefit of the **Debtor**, individually, and the **Debtor** is, therefore, personally liable for said debt pursuant to Art. 21.223(b) Tex.Bus.Orgs. Code.

38. Because the transfers described above constitute “prohibited transactions” under both the “Operating Agreement of Ola Investments, LLC” and 26 U.S.C. §4975(c), the **Debtor** forfeited his exemptions concerning the funds in the **Debtor’s IRAs** and, because those sums were commingled with the funds in his **wife’s IRA**, all sums in OLA INVESTMENTS, LLC’s account(s) when the **Debtor** filed bankruptcy and all sums which have been withdrawn from said account(s), including all of OLA INVESTMENTS, LLC’s commodities and stock trading account(s), since the **Debtor** filed bankruptcy should be turned over to the bankruptcy Trustee.

WHEREFORE, PREMISES CONSIDERED, DALLAS COMMODITY COMPANY prays that this Court:

(A) sustain its objections to the **Debtor’s** claim of exemption for the **Debtor’s IRAs**;

(B) declare that all sums in OLA INVESTMENTS, LLC’s account(s) constitute property of the bankruptcy estate;

(C) order the **Debtor** to account for and turn over all sums which were in OLA INVESTMENTS, LLC’s account(s) when the **Debtor** filed bankruptcy and all sums which have been withdrawn from said account(s), including all of OLA INVESTMENTS, LLC’s commodities and stock trading account(s), since the **Debtor** filed bankruptcy to the bankruptcy Trustee; and

(D) award DALLAS COMMODITY COMPANY such other and further relief, legal or equitable, special or general, to which it maybe justly entitled.

Dated: April 8, 2022.

Respectfully submitted,

By: /s/ Charles I. Kaplan
Charles I. Kaplan
Texas Bar No. 11094300
KAPLAN & MOON, PLLC
Email: cik@charleskaplanlaw.com
2929 Carlisle Street, Suite 115
Dallas, Texas 75204
Office Telephone: (214) 522-4900
Telecopier: (800) 930-7112

Baltasar D. Cruz
Texas Bar No. 05196150
Email: BaltasarDCruz@aol.com
2929 Carlisle Street, Suite 115
Dallas, Texas 75204
Office Telephone: (214) 522-4900
and
P.O. Box 600823
Dallas, TX 75360
Cell Phone: (917) 623-9250
Telecopier: (732) 875-0792

COUNSEL FOR THE MOVANT,
DALLAS COMMODITY COMPANY

CERTIFICATE OF CONFERENCE

I hereby certify that, on April 8, 2022, I conferred with Eric Liepins, the attorney for the Debtor, Joseph F. “Chip” Langston, Jr., in the above-styled and numbered bankruptcy case concerning this motion and he informed me that he is opposed to same.

/s/ Baltasar D. Cruz
Baltasar D. Cruz

CERTIFICATE OF SERVICE

I hereby certify that, on April 8, 2022, a true and correct copy of the foregoing motion was served by ECF email upon all parties accepting such service.

/s/ Charles I. Kaplan
Charles I. Kaplan